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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/840,007	05/05/2004	Fen-Chung Kung	1999-0299CON	7666
7590 Samuel H. Dworetsky AT&T Corp. Post Office Box 4110 Middletown, NJ 07748			EXAMINER DUONG, FRANK	
			ART UNIT	PAPER NUMBER
			2616	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		02/28/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/840,007	Applicant(s) KUNG ET AL.	
	Examiner Frank Duong	Art Unit 2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-13 and 15-17 is/are allowed.
- 6) ☒ Claim(s) 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action is a response to communications dated 12/05/06. Claims 1-17 are pending in the application.

Information Disclosure Statement

2. The information disclosure statement filed 12/05/06 complies with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609. It has considered and been placed in the application file.

Terminal Disclaimer

3. The terminal disclaimer filed on 12/05/06 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of patent number 6,775,267 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chau et al

(USP 5,187,710) (hereinafter "Chau") in view of Rupp et al (*INDEX: A Platform for determining how People Value the Quality of their Internet Access, IEEE, pages 1-7, May 1998*) (hereinafter "Rupp").

Regarding **claim 14**, in accordance with Chau reference entirety, Chau discloses a method for billing for value-added communications calls, comprising, among other things, the step of changing billing parameters during a call in real time in response to user inputs (*see '710, col. 2, lines 28-30 and thereafter*). Chau fails to disclose the user inputs including user requested changes in quality of service, changes in data rate and changes in preferred service provider. However, such limitation lacks thereof from Chau reference is well known and taught by Rupp.

In accordance with Rupp reference entirety, Rupp teaches Internet Demand Experiment (INDEX), a locally developed system for user interaction and metering individual subject usage, comprising, among other things, a java application running on user's computer enables the users to select different QoS and price and control their usage of the network resources during an active session (*see Rupp, page 3, section 2.2, lines 1-11*) to provide an appropriate pricing structures for each segment of the internet and for further proliferation of the internet services (*see Rupp reference, page 2, right col., lines 8-10*). The "price" is either inherently or obviously corresponding to the "data rate" and "service provider" (*see Altmann document, section 2.1, accompanied last Office Action for Examiner's position*).

Thus, it would have been obvious to those skilled in the art at the time of the invention was made to implement or incorporate Rupp's application into Chau's method

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to arrive the claimed invention with a motivation to an appropriate pricing structures for each segment of the internet and for further proliferation of the internet services (see *Rupp reference, page 2, right col., lines 8-10*).

Allowable Subject Matter

5. Claims 1-13 and 15-17 are allowed.

6. The following is a statement of reasons for the indication of allowable subject matter:

The terminal disclaimer filed 12/05/06 has overcome the outstanding double patenting rejection of claims 1-13 and 15-17 against the claimed subject matter of patent 6,775,267, the parent of this instant application. In addition, the prior art of record, considered individually or in combination, fails to fairly show or suggest the claimed invention in a manner as recited in claims 1-13 and 15-17 for the same rationales stated in the parent patent.

Response to Arguments

7. Applicant's arguments filed 12/05/06 have been fully considered but they are not persuasive.

In the Remarks of the outstanding response filed 1/205/06, pertaining the rejection of claim 14 under 35 U.S.C. §103(a) as being unpatentable over Chau in view of Rupp, Applicants disagrees with the Examiner's interpretation of Chau in view of Rupp references in the rejection of claim 14 as being obvious. The Applicants argue, recited verbatim, the followings:

(1) Chau does not disclose the billing parameters changing in response to real time changes in preferred service provider.

(2) The application disclosed in Rupp does not enable the user to select or change service providers during an active session.

(3) Altmann does not disclose changing service providers in real time during a communication.

In response Examiner respectfully disagrees and asserts the applied art of Chau in view of Rupp, as clearly pointed out in the Office Action, does indeed set forth the required prima facie of the obviousness rejection of claim 14 as being unpatentable over Chau in view of Rupp. The disputed limitation in claim 14 just broadly calls for "*said billing comprising changing billing parameters during the communication in real time in response to user inputs including user-requested changes in preferred service provider* (emphasis added by Examiner)."

Chau reference, at col. 2, lines 28-30 and thereafter, teaches a method of billing comprising, among other things, the step changing billing parameters during a call in real time in response to user inputs. What Chau fails to teach is the user inputs "*including user-requested changes in preferred service provider*". However, such limitation lacks thereof is very well known in the art of billing having an option of choosing a service provider among the service providers that cost less or provide better quality of service (QoS). Among the prior art teaching such limitation lacks thereof from Chau is Rupp. Rupp taught an Internet Demand Experiment (INDEX) spearheaded by a group of skilled in the art in Berkley experiment how people valuating their quality of

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Internet access by providing a user with an option to change quality of service (QoS) or prices during a real time connection or enables the user to select different QoS and price and control their usage of the network resources during an active session (see *Rupp*, page 3, section 2.2, lines 1-11) to provide an appropriate pricing structures for each segment of the internet and for further proliferation of the internet services (see *Rupp reference*, page 2, right col., lines 8-10). Even though in the particular document Rupp silenced about the corresponding between the "price" and the "service provider", it is inherently or well known that the "price" does associate with the "service provider" as stated throughout other documents involved with the INDEX as clearly pointed out by the Office Action. Therefore, Chau in view of Rupp does indeed render the claimed invention unpatentable for one of the reasons of obviousness or well known in the art.

Examiner believes an earnest attempt has been made in addressing all of the Applicants' arguments or concern. Due to the response fails to place the instant application in a favorable condition for allowance, the rejection is maintained.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Edell et al, Providing Internet Access: What we learn from the INDEX Trial, downloadable from Berkley University, pages 1-17, April 1999.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frank Duong whose telephone number is 571-272-3164. The examiner can normally be reached on 7:00AM-3:30PM, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynn D. Feild can be reached on 571-272-2092. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read "Frank Duong", with a stylized, cursive script.

FRANK DUONG
PRIMARY EXAMINER

February 19, 2007